IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.1469/2001

Mr. Gurjeet Singh Johar ..... Petitioner
! through: None.

VERSUS

$ State & Anr. ..... Respondents
^ through: None.

% **D**ATE OF DECISION: 10-09-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.(Oral)

1. Petitioner, a chartered accountant, impleaded as accused No.3 in a complaint filed by respondent No.2 under Sections 405, 406, 409, 415, 417, 418 and 420 IPC seeks quashing of the complaint as also the summoning order dated 31.10.2000.

2. I note that vide summoning order dated 31.10.2000, learned Metropolitan Magistrate has directed that the accused persons are being summoned for offences under Sections

406/418/420/34 IPC.

3. M/s. Pertech Computers Ltd. has been impleaded as accused No.1. One Dadan Bhai, stated to be the Chairman of accused No.1 has been impleaded as accused No.2. Petitioner has been impleaded as accused No.3. It is stated in the complaint that State Bank of Travancore is a body corporate constituted under the State Bank of India Subsidiary Banks) Act, 1959 and carries on banking business. That since 1990, the complainant had been sanctioning credit facilities to accused No.1 to enable said accused to meet its working capital requirements. That last sanction for the credit facilities was granted on 29.3.1997 with cash credit limit of Rs.343 lacs and working capital loan of Rs.1032 lacs. That when credit facilities were advanced, accused No.1 was represented by accused No.2. That to avail of the cash credit facilities, accused No.1 executed an agreement for cash credit on 29.3.1997 pertaining to hypothecation of its assets as also another similar agreement of even date pertaining to hypothecation of goods.

4. It is further stated in the complaint that on execution of aforenoted agreements, accused No.1 availed the credit facilities.

5. Stating that till the year 1996, accused No.1

conducting its affairs to the satisfaction of the complainant bank, led the bank to enhance and extend the credit facilities beyond March, 1997. It is stated that when the company started defaulting, complainant as also other lending banks suspected irregularities in the affairs of accused No.1 and appointed a Stock Auditor to conduct the stock audit of accused No.1. It was stated that the said audit resulted in the knowledge gained by the complainant and the other banks that the stock of the company was being valued as per the weighted average cost method, contrary to the terms and conditions of the sanction. This resulted in a fall in the value of the stock pledged as security. It is alleged that due to aforesaid method of valuing the stock of the company, accused No.1 was able to avail of a higher credit facility.

6. Pertaining to the petitioner only allegations are in para 21 of the complaint where following has been stated :-

> "21. The above irregularities, commissions and ommissions and manipulations of the financial statements of the Accused No.1 by Accused No.2 would not have been possible without the knowledge and connivance of the Accused No.3, the partner of the Chartered Accountant firm who had audited the annual-accounts of the Accused No.1 company for the year ended 31.12.1996, based on which the complainant Bank alongwith other Consortium Banks had last disbursed enhanced credit facilities to the Accused No.1 Company."

7. It has to be noted that accused No.2 is a chartered accountant. It has further to be noted that no grievance has been made in the complaint that the methodology adopted to certify the stock value of accused No.1 was contrary to the recognized norms of maintaining accounts.

8. As noted above, gravement of the allegation is that the weighted average cost method adopted to value the stock of accused No.1 was not in conformity with the terms and conditions of the credit facilities which were sanctioned to accused No.1.

9. As noted hereinabove, acts of cheating are primarily directed against accused No.2.

10. As far as the petitioner is concerned, if at all, liability could be fastened only by invoking Section 34 of the Indian Penal Code.

11. Thus, there have to be actionable averments that accused no.3, i.e. the petitioner acted in concert with accused No.1 and while so acting furthered a common intention. I find none.

12. From a perusal of the complaint, it is apparent that the alleged entrustment was to accused No.1 acting through accused No.2. Similarly, the offence of deception resulting

in

stated cheating, attracting Section 418 of the IPC is against accused No.1 acting through accused No.2. Similar would be the position vis-a-vis the offence attracting Section 420 IPC.

13. Before concluding, I may note that as the statutory auditor of the company, as long as the petitioner, while certifying the records of the company, acted within known rules and procedures as also recognized norms pertaining to the branch of accountancy, no liability could be fastened on him on the only allegation that the agreement between the bank and the company required a particular methodology of stock valuation to be adopted.

14. I, thus, dispose of the petition quashing the complaint against the petitioner as also the summoning order dated 31.10.2000 against the petitioner.

15. No costs.

September 10, 2007 **PRADEEP NANDRAJOG, J.**
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